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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 UNITED STATES OF AMERICA, )  
11 Plaintiff, ) Case No. 2:11-CR-057-LDG-(CWH)  
12 v. )  
13 FRANCISCO MUÑOZ, aka RED, )  
14 Defendant. )  
15

16 **United States' Motion To Amend Judgment**

17 **Background and Facts**

18 COMES NOW the United States of America, by and through the United States  
19 Attorney for the District of Nevada, and moves this Court, pursuant to Rule 36, Fed. R.  
20 Crim. P., to amend the order of Judgment and Commitment that this court entered in the  
21 above-captioned case on July 13, 2012.

22 In this case, the defendant was indicted for conspiracy to distribute  
23 methamphetamine, heroin, cocaine and marijuana, all in violation of 21 U.S.C. §§  
24 841(a)(1) and 846. On March 12, 2012, the defendant pled guilty to both counts of a  
25 Criminal Information, charging him with conspiracy to distribute marijuana, and  
26 possession of a firearm by a prohibited person. At the defendant's sentencing hearing on  
27 June 29, 2012, this Court signed a final order of forfeiture forfeiting several motor  
28 vehicles, several firearms, and \$38,980.00 in United States Currency to the United States

1 of America. This Court also signed a standard “Judgment In A Criminal Case” form that  
2 imposed various other penal sanctions on the defendant, including a 78-month term of  
3 incarceration.

4 Typically, during the course of a sentencing hearing, Government counsel will  
5 request, or the Court will declare, *sua sponte*, that the forfeiture order will be appended  
6 to, and made a part of, the signed Judgment and Commitment. This practice is consistent  
7 with the mandate of Rule 32.2 (b)(4)(B), Fed. R. Crim. P., which states that the Court  
8 “must also include the forfeiture order, directly or by reference, in the judgment, but that  
9 the Court’s failure to do so may be corrected at any time under Rule 36.” While it was  
10 (and is) the intent of the Government that this Court make the order of forfeiture a part of  
11 the Judgment and Commitment, apparently no such statement of incorporation was made  
12 at the sentencing by the Court or counsel.

13 The straightforward provisions of Rule 36, Fed. R. Crim. P., provide that: “After  
14 giving any notice it considers appropriate, the court may at any time correct a clerical  
15 error in a judgment, order or other part of the record, or correct an error in the record  
16 arising from oversight or omission.” (emphasis added).<sup>1</sup>

17 That it was this Court’s intent to impose a forfeiture sanction against the defendant  
18 is apparent from its execution of the Preliminary and Final Orders of Forfeiture.  
19 However, to give that independent order the force and effect of a judgment, it should, as  
20 Rule 32.2 requires, be incorporated by reference, as well as by physical attachment, to the  
21 Judgment and Commitment form.

22 In addition, at the bottom of the “Schedule of Payments” page of the  
23 Judgement and Commitment, we request that this Court check the box that denotes the  
24 following language: “The defendant shall forfeit the defendant’s interest in the following

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26                   <sup>1</sup>Consistent with standard practice, the United States will serve defendant’s counsel with a  
27 copy of this motion to satisfy the notice requirement embodied in Rule 36.

1 property to the United States:" Underneath that checked box we request that the  
2 following language be included:

3 "See attached Final Order of Forfeiture"

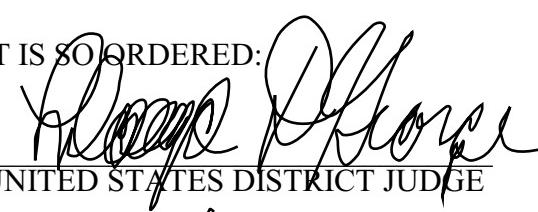
4 Because Rule 36 gives this Court expansive authority to correct a clerical error or  
5 oversight; because it was the intent of this Court and the Government that the property  
6 described in the information, the plea agreement, the preliminary order of forfeiture and  
7 the final order of forfeiture be forfeited to the United States; and because it will serve the  
8 ends of justice to make a correction to the Judgment and Commitment, as described  
9 above, that complies with the requirements of Rule 36, the United States requests that the  
10 Judgment and Commitment be modified accordingly and that a copy of the Final Order of  
11 Forfeiture be appended thereto.

12 WHEREFORE, the United States request, that its motion, in its entirety, be  
13 granted.

14  
15 Respectfully submitted,

16 DANIEL G. BOGDEN  
United States Attorney

17 /s/Michael A. Humphreys  
MICHAEL A. HUMPHREYS  
Assistant United States Attorney

20  
21 IT IS SO ORDERED:  
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24   
UNITED STATES DISTRICT JUDGE

25 DATED: 8 April 2014  
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